

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF TENNESSEE  
NORTHERN DIVISION

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UNITED STATES OF AMERICA     )  
                                      ) No. 3:13-cr-063-1  
Plaintiff,                         )  
                                      ) Knoxville, TN  
v.                                    ) May 29, 2013  
                                      ) 11:00 a.m.  
ARNOLD RALENKOTTER             )  
                                      )  
Defendant.                         )

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PLEA TO INFORMATION  
BEFORE THE HONORABLE AMUL R. THAPAR  
UNITED STATES DISTRICT JUDGE

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Appearances:

For the Plaintiff:           F.M. HAMILTON, III, ESQ.  
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1           This cause came on for hearing on the 29th of May,  
2           2013, in the United States District Court for the Eastern  
3           District of Tennessee, Northern Division, the Honorable Judge  
4           Amul R. Thapar presiding.

5           The Court having been duly opened, the following  
6           proceedings were had, to-wit:

7           COURTROOM DEPUTY: All rise. This Court is now in  
8           session. The Honorable Amul R. Thapar, United States Eastern  
9           District Judge presiding. Please come to order and be seated.

10          THE COURT: Please call the case.

11          COURTROOM DEPUTY: Yes, Your Honor. This is  
12          criminal action 3:13-CR-063-1, United States of America versus  
13          Arnold Ralenkotter.

14          Is the Government present and ready to proceed?

15          MR. HAMILTON: We are, Your Honor.

16          COURTROOM DEPUTY: Is the Defendant present and  
17          ready to proceed?

18          MR. YARBROUGH: The Defendant is present and ready,  
19          Your Honor and I'm Edward Yarbrough of the Davidson County  
20          Tennessee Bar, Your Honor.

21          THE COURT: Good morning. Good morning to everyone.  
22          Mr. Yarbrough, can you and your client please approach the  
23          podium? Are you okay with that?

24          MR. YARBROUGH: Yes, Your Honor.

25          THE COURT: Can you please place the Defendant under

1 oath?

2 COURTROOM DEPUTY: Yes, Your Honor. Mr.

3 Ralenkotter, if you would, do you solemnly swear or affirm to  
4 tell the truth, the whole truth, and nothing, but the truth,  
5 so help you God?

6 MR. RALENKOTTER: I do.

7 (The witness was duly sworn.)

8 COURTROOM DEPUTY: Please state your full name for  
9 the record.

10 MR. RALENKOTTER: Arnold Lee Ralenkotter.

11 THE COURT: And, Mr. Ralenkotter, are you  
12 represented in this proceeding by Mr. Yarbrough who is to your  
13 right?

14 MR. RALENKOTTER: Yes, Your Honor.

15 THE COURT: Okay. I want to make you a deal. I'm  
16 going to ask you a large number of questions and some of them  
17 I may gargle, I may be confusing in some way. Will you make  
18 sure that, as I ask a question, that you understand them? And  
19 if you don't, can you stop me and tell me you don't understand  
20 them so I can rephrase them?

21 MR. RALENKOTTER: Yes, Your Honor.

22 THE COURT: Okay. Have you all executed a waiver of  
23 indictment?

24 MR. YARBROUGH: May it please the Court, we have a  
25 form waiver of indictment in this case, which is ready to be

1           executed, but he has not yet signed it, but he is prepared to.

2           THE COURT:   Okay.   May I ask the United States --  
3           I'm sorry.   Who's speaking for the United States?

4           MR. HAMILTON:   Your Honor, my name is Trey Hamilton.  
5           I'm with the U.S. Attorney's Office here in Knoxville,  
6           Tennessee.

7           THE COURT:   Okay.   Mr. Hamilton, good morning.   The  
8           process is -- just so I understand, because I usually do the  
9           waivers, you've gone through the whole -- he understands his  
10          rights about the grand jury and everything else, he's waived  
11          all those rights and I can sign the waiver of indictment and  
12          proceed to the change of plea?

13          MR. HAMILTON:   That's covered in the waiver that he  
14          is waiving his right to an indictment by way of grand jury.  
15          That's also specifically addressed in the plea agreement and  
16          -- but I believe that during this Rule 11 proceeding that  
17          those rights would also be reviewed with him.   He's had his  
18          initial appearance, but that's the extent to the proceedings.

19          THE COURT:   Did the Magistrate Judge go over the  
20          waiver?

21          MR. HAMILTON:   No, Your Honor.

22          THE COURT:   Okay.   All right.   Before we get to the  
23          plea, Mr. Ralengkotter, I want to talk to you about the waiver  
24          for just a minute and I'm going to -- if I do it by memory,  
25          I'll forget to tell you something, so I'm going to pull

1 something up on my -- just give me one second and I will get  
2 it up.

3 Now, Mr. Ralenkotter, as I pull this up, I'm going  
4 to ask you some of the questions that I remember by memory,  
5 which is first and foremost, you understand that the  
6 Government has to -- if they want to return an indictment,  
7 they have to present that to a grand jury. Do you understand  
8 that?

9 MR. RALENKOTTER: Yes, Your Honor.

10 THE COURT: And a grand jury is just a group of  
11 citizens drawn from the general public. In other words, a  
12 group of your peers and ordinary citizens that would have to  
13 hear the evidence and determine by a preponderance of the  
14 evidence that you have, in fact, committed a crime that the  
15 Government's alleging. Do you understand that?

16 MR. RALENKOTTER: Yes, Your Honor.

17 THE COURT: And while the indictment is not evidence  
18 of guilt, you do have a constitutional right for any felony  
19 that it be presented to a grand jury and they pass judgment on  
20 whether or not there's a preponderance of the evidence  
21 supporting your guilt. Do you understand that?

22 MR. RALENKOTTER: Yes, Your Honor.

23 THE COURT: Okay. And, now, I'm going to pull up my  
24 form to make sure --

25 MR. HAMILTON: Your Honor --

1 THE COURT: Yes?

2 MR. HAMILTON: And, please, I apologize for  
3 interrupting the Court --

4 THE COURT: No.

5 MR. HAMILTON: -- but if I may make a suggestion to  
6 the Court that the grand jury need only find by probable cause  
7 that --

8 THE COURT: That's right. See? That's why I pull  
9 up my forms. The U.S. is correct. So they have to find by  
10 probable cause, which they're all kind of nebulous concepts,  
11 but the key about probable cause is it's less than beyond a  
12 reasonable doubt, which a jury would have to find and we're  
13 going to talk about in a little bit. Do you understand that?

14 MR. RALENKOTTER: Yes, Your Honor.

15 THE COURT: Okay. Great. Let's see if I can find  
16 this. You understand that you have each and every one of  
17 these rights and the grand jury would have to meet, hear  
18 witnesses against you that the Government would present and  
19 then make those determinations?

20 MR. RALENKOTTER: Yes, Your Honor.

21 THE COURT: And knowing all of this, you're willing  
22 to waive your rights to a grand jury indicting you and proceed  
23 by information?

24 MR. RALENKOTTER: Yes, Your Honor.

25 THE COURT: Okay. Is there any other questions the

1 United States believes I need to ask before accepting the  
2 waiver?

3 MR. HAMILTON: No, Your Honor. I believe that  
4 there's a form that's been provided that he can sign in open  
5 court if the Court wouldn't mind going through that as well,  
6 which you may have intended to do --

7 THE COURT: Yes.

8 MR. HAMILTON: -- but with respect to the waiver of  
9 the indictment and grand jury, no, Your Honor.

10 THE COURT: Okay. And Mr. Yarbrough, you agree  
11 there's no other questions I need to ask --

12 MR. YARBROUGH: Yes, Your Honor. I have discussed  
13 this at some length with my client and I believe he is fully  
14 understanding of his rights to an indictment.

15 THE COURT: Great. Mr. Ralenkotter, in front of you  
16 -- am I pronouncing your name correctly?

17 MR. RALENKOTTER: Yes, sir.

18 THE COURT: In front of you is a waiver of the  
19 indictment. By signing that, you're acknowledging you fully  
20 understand your rights and are willing to give up those rights  
21 and proceed by information?

22 MR. RALENKOTTER: Yes, Your Honor.

23 THE COURT: Okay. You may go ahead and execute  
24 that.

25 (The Defendant signed the Waiver of Indictment.)

1 THE COURT: Do you have any questions, sir, about  
2 that form or anything we've talked about so far?

3 MR. RALENKOTTER: No, Your Honor.

4 THE COURT: And you reviewed all the contents of  
5 this waiver with your attorney?

6 MR. RALENKOTTER: Yes, Your Honor.

7 THE COURT: And I don't need to execute it. Is that  
8 correct?

9 MR. HAMILTON: That's not our practice here.

10 THE COURT: Okay. Great. So this can be filed in  
11 the record in this case?

12 MR. HAMILTON: Yes, Your Honor. Okay. Great. Now,  
13 I'm going to ask you a number of questions. It's my  
14 understanding that you've come here today with the intention  
15 to plead guilty. Is that correct?

16 MR. RALENKOTTER: Yes, Your Honor.

17 THE COURT: Okay. Do you understand that you're now  
18 under oath and if you give false answers to any of my  
19 questions, you can be charged with perjury or making a false  
20 statement?

21 MR. RALENKOTTER: Yes, Your Honor.

22 THE COURT: Have you discussed everything you  
23 believe you need to with Mr. Yarbrough?

24 MR. RALENKOTTER: Yes, Your Honor.

25 THE COURT: Have you had an opportunity to review



1 the waiver of indictment you just signed?

2 MR. RALENKOTTER: Yes, Your Honor.

3 THE COURT: Okay. And you've gone over all the  
4 contents with him?

5 MR. RALENKOTTER: Yes, Your Honor.

6 THE COURT: And you've talked about any possible  
7 defenses you may have to the charges the United States is  
8 bringing with Mr. Yarbrough?

9 MR. RALENKOTTER: Yes, Your Honor.

10 THE COURT: And, in your mind, have you had all of  
11 your questions answered before coming here today?

12 MR. RALENKOTTER: Yes, Your Honor.

13 THE COURT: Do you have any lingering questions  
14 about the process, about the waiver of indictment, about  
15 changing your plea, about any of that?

16 MR. RALENKOTTER: No, Your Honor.

17 THE COURT: So it's my understanding that in making  
18 and having all of these discussions, it's your intention to  
19 plead guilty, correct?

20 MR. RALENKOTTER: Yes, Your Honor.

21 THE COURT: In making that determination, did you  
22 discuss the maximum possible penalty with your attorney?

23 MR. RALENKOTTER: We did.

24 THE COURT: Okay. Sir, how old are you?

25 MR. RALENKOTTER: 51.

1                   THE COURT: And why don't you tell me where you went  
2 to school?

3                   MR. RALENKOTTER: College?

4                   THE COURT: Why don't you start with high school and  
5 go all the way through.

6                   MR. RALENKOTTER: I grew up in a little town,  
7 Erlanger, Kentucky. I went to a small catholic high school.

8                   THE COURT: What --

9                   MR. RALENKOTTER: St. Henry.

10                  THE COURT: Okay. I'm from that area, so I'm  
11 familiar with it.

12                  MR. RALENKOTTER: I attended Northern Kentucky  
13 University while working full-time. I did not complete  
14 Northern Kentucky University. I took a job and went to work  
15 before I completed school.

16                  THE COURT: Did you ever complete college?

17                  MR. RALENKOTTER: No, sir.

18                  THE COURT: Okay. And where did you take a job?

19                  MR. RALENKOTTER: I actually moved to Nashville and  
20 went to work for a company called Comp Data.

21                  THE COURT: Okay. And how long did you work there?

22                  MR. RALENKOTTER: Eight years, eight or nine years.

23                  THE COURT: And then why don't you tell me where you  
24 went from there?

25                  MR. RALENKOTTER: That was '86 to '94. In '94, I

1       went up there and went to work with a truck stop chain called  
2       Petro. They were based out of El Paso, but I went to work for  
3       them covering the northeast territory, worked there for three  
4       years and then went to work at Pilot.

5               THE COURT: And you've worked there ever since?

6               MR. RALENKOTTER: Yes, sir.

7               THE COURT: Okay. Have you in your entire life been  
8       treated for any mental illnesses?

9               MR. RALENKOTTER: No, sir.

10              THE COURT: Have you ever been addicted to narcotics  
11      of any kind?

12              MR. RALENKOTTER: No, sir.

13              THE COURT: Have you taken any narcotic drugs,  
14      tranquilizers, or hallucinogens in the past 24 hours?

15              MR. RALENKOTTER: No, sir.

16              THE COURT: Have you taken any medicine in the past  
17      24 hours?

18              MR. RALENKOTTER: I took a NyQuil tablet last night  
19      to try to sleep.

20              THE COURT: Okay. And what time did you take the  
21      NyQuil tablet?

22              MR. RALENKOTTER: About 10:30.

23              THE COURT: Okay. And so in my experience with  
24      NyQuil tablets, that wears off about six to eight hours later.  
25      Is that your experience as well?

1 MR. RALENKOTTER: I was up about 6:30.

2 THE COURT: I'm sorry?

3 MR. RALENKOTTER: I was up about 6:30 this morning.

4 THE COURT: And you know how NyQuil can make you  
5 drowsy, were you drowsy at all?

6 MR. RALENKOTTER: Till I had my first cup of coffee.

7 THE COURT: Okay. You sound like me. Are you  
8 drowsy at all now?

9 MR. RALENKOTTER: Maybe a little bit, sure.

10 THE COURT: Okay. And do you feel like you can  
11 fully understand all of my questions in spite of that  
12 drowsiness?

13 MR. RALENKOTTER: Yes, sir.

14 THE COURT: Have you taken any other pills of any  
15 kind in the past 24 hours?

16 MR. RALENKOTTER: No, sir.

17 THE COURT: What about vitamins?

18 MR. RALENKOTTER: No, sir.

19 THE COURT: Okay. What about alcoholic beverages?  
20 Have you drank any in the past 24 hours?

21 MR. RALENKOTTER: No, sir.

22 THE COURT: Do you know why I'm asking you all these  
23 questions?

24 MR. RALENKOTTER: No, sir.

25 THE COURT: I want to make sure that you -- remember

1       how I told you at the beginning I want you to understand my  
2       questions? If you're on drugs, you can tell me you understand  
3       them, but you really won't.

4               Now, I can tell from looking at you and your  
5       response that you understand everything I'm saying, but I just  
6       want to make sure.

7               Mr. Yarbrough, do you have any question as to the  
8       Defendant's competency to plead at this time?

9               MR. YARBROUGH: No, I do not, Your Honor.

10              THE COURT: Mr. Yarbrough, have you ever at any time  
11       perceived a need for an evaluation of the Defendant or seen  
12       any indication of erratic or irrational decision making on  
13       behalf of the Defendant?

14              MR. YARBROUGH: No, Your Honor. I've seen no  
15       indications of that.

16              THE COURT: Okay. Mr. Ralenkotter, do you  
17       understand the charge against you in this case?

18              MR. RALENKOTTER: Yes, sir.

19              THE COURT: Are you satisfied with Mr. Yarbrough's  
20       advice and representation?

21              MR. RALENKOTTER: Yes, sir.

22              THE COURT: I want to talk to you -- I know you went  
23       over this with your attorney, but I want to talk to you for a  
24       minute about the maximum penalties and how they work in this  
25       case and if you have any questions, I want to talk to you

1 about that okay?

2 MR. RALENKOTTER: Yes, sir.

3 THE COURT: So it's my understanding you're here  
4 today to plead to a count, one count of conspiracy to commit  
5 mail fraud and wire fraud in violation of 18 United States  
6 Code § 1349, right?

7 MR. RALENKOTTER: Yes, sir.

8 THE COURT: And you've gone over that section with  
9 your attorney, correct?

10 MR. RALENKOTTER: Yes, sir.

11 THE COURT: And you understand it carries a maximum  
12 penalty of 20 years imprisonment?

13 MR. RALENKOTTER: Yes, sir.

14 THE COURT: Do you understand it carries a fine of  
15 not more than \$250,000?

16 MR. RALENKOTTER: Yes, sir.

17 THE COURT: Do you understand that restitution in  
18 this case may be mandatory and you will be liable for that  
19 restitution?

20 MR. RALENKOTTER: Yes, sir.

21 THE COURT: Am I correct, Mr. Lewen, that  
22 restitution may be mandatory?

23 MR. HAMILTON: Your Honor, restitution is mandatory  
24 in this case.

25 THE COURT: Okay. And have the victims been

1 notified of their rights?

2 MR. HAMILTON: Well, Your Honor, in this case,  
3 because it's an ongoing investigation and because the  
4 potential victims are still being identified in this ongoing  
5 investigation, not all of the potential victims have been  
6 notified because they're still being identified.

7 Additionally, this proceeding was under seal until  
8 just moments before, Judge, you stepped out here and as a  
9 result, the one company who was identified as a potential  
10 victim in the plea agreement has not been notified.

11 But consistent with the law under 18 U.S.C. §  
12 3171(c), the United States will make it's best efforts to  
13 notify that victim shortly following this proceeding now that  
14 this matter is not under seal.

15 THE COURT: Great. And can I be assured as we go  
16 forward that the United States will notify all victims as they  
17 become -- as the United States becomes aware of them and  
18 notify them of all hearings and relevant matters?

19 MR. HAMILTON: Yes, your Honor. The United States  
20 is well aware of its obligations with respect to victim  
21 notification and as those victims are identified and confirmed  
22 to be victims, we will certainly comply with our obligations  
23 under the law.

24 THE COURT: Great. Thank you very much.

25 Do you also understand that you'll face a mandatory

1 special assessment of \$100, which you will have to pay?

2 MR. RALENKOTTER: Yes, sir.

3 THE COURT: Finally, I want to talk to you for a  
4 second about supervised release. You will be placed on up to  
5 three years of supervised release following any period of  
6 incarceration. Do you understand that?

7 MR. RALENKOTTER: Yes, sir.

8 THE COURT: And the conditions on supervision may be  
9 stricter than society in general, so I'm going to give you an  
10 example. After -- when we get to sentencing, I may require  
11 that you complete your college degree and I may only give you  
12 two years to do so, all right?

13 So unlike everyone else in the world, if you don't  
14 complete your college degree, can you tell me what would  
15 happen to you?

16 MR. RALENKOTTER: I would go to jail.

17 THE COURT: You'd go back to jail. So supervised  
18 release can be a revolving door where if you don't comply with  
19 the terms and conditions I set that will be stricter than  
20 society, you could end up back in jail. Do you understand  
21 that?

22 MR. RALENKOTTER: Yes, Your Honor.

23 THE COURT: And then you will be placed on a new  
24 period of supervised release. Do you understand that?

25 MR. RALENKOTTER: Yes, Your Honor.



1           THE COURT: There's another thing about supervised  
2 release that's different than everything else, whereas the  
3 Government needs to prove your guilt beyond a reasonable doubt  
4 to show a criminal violation, for supervised release, they  
5 only need to prove a violation by a preponderance of the  
6 evidence. Do you understand that?

7           MR. RALENKOTTER: Yes, Your Honor.

8           THE COURT: So if I say you're not allowed to drink  
9 alcohol during the term of your supervision, which is likely a  
10 condition, and they can prove by a preponderance of the  
11 evidence that you had one beer, do you know where you go?

12          MR. RALENKOTTER: Back to jail, sir.

13          THE COURT: Okay. So you understand that. Do you  
14 have any questions about supervised release or anything we've  
15 talked about so far?

16          MR. RALENKOTTER: No, Your Honor.

17          THE COURT: Now, we talked about how the maximum  
18 term of imprisonment in this case is 20 years in prison. Do  
19 you understand that if the Court accepts your plea of guilty,  
20 it can impose the maximum penalty of 20 years imprisonment in  
21 this case?

22          MR. RALENKOTTER: Yes, Your Honor.

23          THE COURT: And three years of supervised release.  
24 Do you understand that?

25          MR. RALENKOTTER: Yes, Your Honor.

1           THE COURT: Do you understand that if your plea of  
2 guilty is accepted, the Court can impose the same penalty as  
3 though you pled not guilty, stood trial, and were convicted by  
4 a jury?

5           MR. RALENKOTTER: Yes, Your Honor.

6           THE COURT: Do you understand that the offences to  
7 which you are pleading -- the offense to which you are  
8 pleading guilty is a felony offense and that if your plea is  
9 accepted, you will be judged guilty of that offense and such  
10 adjudication may deprive you of valuable civil rights such as  
11 the right to vote, the right to hold public office, the right  
12 to serve on a jury, and the right to possess any kind of  
13 firearm?

14          MR. RALENKOTTER: Yes, Your Honor.

15          THE COURT: Are you a citizen of the United States?

16          MR. RALENKOTTER: Yes, Your Honor.

17          THE COURT: Do you understand if you're not a  
18 citizen of the United States or the Government later  
19 determines that you are not, you could be subject to  
20 deportation and most likely will as a result of pleading  
21 guilty to this offense?

22          MR. RALENKOTTER: Yes, Your Honor.

23          THE COURT: Okay. Don't worry. If you are a  
24 citizen, they can't take it away as long as you're a  
25 natural-born citizen, at least I've not heard -- and Mr.

Yarbrough may know more than me, but I've never heard of the United States being able to do that.

MR. YARBROUGH: I'm with you, Judge.

THE COURT: Okay. Do you also understand that by pleading guilty, you can lose significant things including professional licenses, the right to a concealed carry permit or other gun permits because you'll never be able to possess a gun again, and you could also have difficulty finding jobs in the like as a convicted felon?

MR. RALENKOTTER: Yes, Your Honor.

THE COURT: Do you have any questions about any of that?

MR. RALENKOTTER: No, Your Honor.

THE COURT: Have you and Mr. Yarbrough gone over how the sentencing guidelines might apply in your case?

MR. RALENKOTTER: Yes, Your Honor.

THE COURT: Do you understand that the sentencing guidelines are just one tool the Court will use in determining an appropriate sentence in your case?

MR. RALENKOTTER: Yes, Your Honor.

THE COURT: Mr. Lewen, this is not an 11(c)(1)(C) plea agreement, correct?

MR. HAMILTON: It is not, Your Honor. And this is Mr. Lewen. I'm Mr. Hamilton, but --

THE COURT: I am so sorry.

1 MR. HAMILTON: -- I'm happy to be called Mr. Lewen.

2 It's totally -- but I just wanted to --

3 THE COURT: Well, I'm glad you clarified that.

4 MR. HAMILTON: Your Honor, it is not an 11(c)(1)(C)  
5 plea agreement, but as the Court I'm sure has already seen in  
6 paragraph 3, the United States has agreed to make a  
7 recommendation pursuant to 11(c)(1)(B), which the Court is not  
8 obligated to accept. So this is not an 11(c)(1)(C).

9 THE COURT: Do you understand all that, Mr.  
10 Ralenkotter?

11 MR. RALENKOTTER: I think so, Your Honor.

12 THE COURT: Okay. Let's talk about it for just a  
13 second. So what Mr. Hamilton said -- and I apologize again  
14 for getting the names wrong, but -- and it won't happen again,  
15 Mr. Hamilton, now that I've figured it out.

16 MR. HAMILTON: I'm happy to be called Mr. Lewen any  
17 time.

18 THE COURT: Okay. Good. And I assume Mr. Lewen is  
19 sitting to your right and my left?

20 MR. HAMILTON: That's correct.

21 THE COURT: Okay. Good. Mr. Ralenkotter, in the  
22 plea agreement -- and we're going to go over the plea  
23 agreement momentarily, the United States, in that discussion  
24 we just had, an 11(c)(1)(C) plea agreement is binding on the  
25 Court, whereas an 11(c)(1)(B) plea agreement is just a

1 recommendation to the Court. Do you understand the  
2 difference?

3 MR. RALENKOTTER: Yes, sir.

4 THE COURT: The sentencing guidelines, I want to  
5 talk to you about for just a second, are a way of setting  
6 boundaries, boundaries that are advisory for the Court in  
7 determining what an appropriate sentence is. Do you  
8 understand that?

9 MR. RALENKOTTER: Yes, Your Honor.

10 THE COURT: But before the Court can determine an  
11 appropriate sentence in your case, there will be a presentence  
12 report prepared and the Court must consider that as well as  
13 all other facts your attorney and the United States wants the  
14 Court to consider and then the Court will look at what's  
15 called 18 United States Code § 3553(a) factors to determine if  
16 the guidelines are reasonable and sufficient, but not greater  
17 than necessary in your case. Do you understand that?

18 MR. RALENKOTTER: Yes, Your Honor.

19 THE COURT: Okay. So I just gave you a mouthful and  
20 you understand everything I said?

21 MR. RALENKOTTER: Am I C or B?

22 THE COURT: You are B, so there's no binding -- in  
23 other words, what's going to happen just so we're on the same  
24 page is you'll do whatever you and the Government have agreed  
25 to do, you'll plead to this -- and then some day down the

1 road, usually 90 to 120 days, but the Government or Mr.  
2 Yarbrough may push that off so that everyone is sentenced at  
3 the same time so that your -- you get a fair sentence, these  
4 will be all your codefendants.

5 Now, the Court doesn't have to consider that, but  
6 it's something Courts ordinarily consider in determining what  
7 a fair sentence is.

8 What happens is a presentence report is prepared and  
9 your attorney and the United States -- and we're going to talk  
10 about this -- are going to have the opportunity to object to  
11 that and then the Court gets that, okay?

12 And, first, you have an opportunity to object with  
13 probation and if they don't agree with you or the United  
14 States, then it comes to me and we have a hearing on that,  
15 then I determine what the guidelines are.

16 Now, just because I determine what the guidelines  
17 are doesn't mean I have to sentence within the guidelines. I  
18 can vary upwards and I can vary downwards. And I'll give you  
19 a sentence that the statutory factors and the guidelines  
20 determine is fair and just.

21 The difference is an 11(c)(1)(C) plea agreement, you  
22 and United States agree to a specific sentence and I can  
23 either accept the plea agreement or reject the plea agreement,  
24 but I have no discretion as to sentence in that situation. Do  
25 you understand the difference?

1 MR. RALENKOTTER: Yes, I do, Your Honor. Thank you.

2 THE COURT: Okay. And your plea is 11(c)(1)(B) plea  
3 agreement. Do you understand?

4 MR. RALENKOTTER: Yes, Your Honor.

5 THE COURT: Okay. Do you understand -- as I've just  
6 talked about probably more than you wanted to hear, that I  
7 won't be able to determine a fair and just sentence until  
8 after I consider the presentence report?

9 MR. RALENKOTTER: Yes, Your Honor.

10 THE COURT: So if you ask me today what sentence you  
11 are going to get, I would tell you it's somewhere between 0  
12 and 20 years.

13 MR. RALENKOTTER: Yes, Your Honor.

14 THE COURT: Okay. Do you understand the Court is  
15 not bound by any stipulation of facts between you and the  
16 Government, the Court will, with the aid of the presentence  
17 report, determine what facts are relevant for sentencing?

18 MR. RALENKOTTER: Yes, Your Honor.

19 THE COURT: Now, I want to talk to you about a  
20 specific provision in the plea agreement that I marked, but it  
21 might take me a little time to find. And, Mr. Hamilton, maybe  
22 you can point me to it. I think it's different than ours,  
23 which is the waiver in -- the waiver of appeal and things like  
24 that.

25 MR. HAMILTON: Yes. I believe that it's either

1 paragraph -- I think it's paragraph 13, Your Honor.

2 THE COURT: So do you have the plea agreement in  
3 front of you?

4 MR. RALENKOTTER: Yes, Your Honor.

5 THE COURT: Okay. I want you to look at paragraph  
6 13 and I want to talk about 13A first, okay? So the -- you --  
7 here, if you go past the first introductory point, which  
8 points out the kind of deal you all cut, "the Defendant agrees  
9 not to file a direct appeal of the Defendant's conviction or  
10 sentence except that the Defendant retains the right to appeal  
11 a sentence imposed above the sentencing guideline range or any  
12 applicable mandatory minimum sentence, whichever is greater  
13 determined by the District Court."

14 Now, it's my understanding, unless something's new,  
15 Mr. Hamilton, there is no mandatory minimum in a 1349 crime,  
16 correct?

17 MR. HAMILTON: That is correct, Your Honor.

18 THE COURT: Okay. So you can ignore that part and  
19 let's talk about this: So let's say the guidelines in your  
20 case -- and I'm just making this up, I have no idea -- are 18  
21 to 24 months, okay? If I sentence you to 21 months, can you  
22 appeal the sentence?

23 MR. RALENKOTTER: No, Your Honor.

24 THE COURT: Okay. What if I sentence you to 24  
25 months and two days? Can you appeal the sentence?



1 MR. RALENKOTTER: Yes, Your Honor.

2 THE COURT: Okay. What if I sentence you to 12  
3 months and one day? Can you appeal the sentence?

4 MR. RALENKOTTER: No, Your Honor.

5 THE COURT: It's because you can only appeal the  
6 sentence if it's greater than the sentencing guideline range.  
7 And as we talked about before, I can sentence you above the  
8 sentencing guideline range -- and you're nodding your head so  
9 you understand that, correct?

10 MR. RALENKOTTER: Yes, sir.

11 THE COURT: In that instance, you can appeal, but in  
12 all other instances, you can't. Any questions?

13 MR. RALENKOTTER: No, sir.

14 THE COURT: Okay. Let's go over paragraph B. "In  
15 addition, the Defendant knowingly and voluntarily waives the  
16 right to file any motions or pleadings pursuant to 28 United  
17 States Code § 2255 or to collaterally attack the Defendant's  
18 conviction and/or resulting sentence."

19 Now, I want to talk to you about that before we talk  
20 about the second sentence. What this means -- essentially  
21 what -- they've set a deal and their deal is you can't attack  
22 any screw-ups I make after the fact, but you can attack if  
23 your counsel was ineffective and that's -- I'm going to tell  
24 you right now that's a very difficult burden to prove, or if  
25 the prosecutor acted unethically, you can attack that after

1 the fact in what's called a habeas corpus petition.

2 But by this waiver, if I screw up somehow, you can't  
3 appeal me if I sentence you and the guidelines are below and  
4 you can't attack me after the fact and say, "Judge, you were a  
5 nutcase and you screwed up," you can't do that. Do you  
6 understand that?

7 MR. RALENKOTTER: Yes, Your Honor.

8 THE COURT: The only thing you retain the right to  
9 do, as the second sentence says, is attack your counsel for  
10 being ineffective, which I mentioned is very difficult to  
11 prove, or attack the prosecutor for misconduct. Do you  
12 understand that?

13 MR. RALENKOTTER: Yes, Your Honor.

14 THE COURT: Okay. And that's also very difficult to  
15 prove. Do you have any questions about that?

16 MR. RALENKOTTER: No, sir.

17 THE COURT: Okay. Now, Mr. Hamilton, I want to know  
18 how many plea offers you made to Mr. Yarbrough or how many  
19 different plea agreements occurred in this case -- or were  
20 made.

21 MR. HAMILTON: I'm sorry. Could you help me  
22 understand that question better?

23 THE COURT: Yeah. The Missouri case out of the  
24 United States Supreme Court -- what I'd like to know is how  
25 many -- let's talk about it. So you and Mr. Yarbrough had

1 discussions about a plea in this case obviously. You didn't  
2 just show up today with a plea agreement and everyone signed  
3 it. And how many plea agreements did you mail, fax, send,  
4 e-mail, any way, hand to Mr. Yarbrough?

5 MR. HAMILTON: I think I understand, Your Honor. Is  
6 the point of this exercise to make sure that the Defendant is  
7 fully informed of any offers that have been made from --

8 THE COURT: That is correct.

9 MR. HAMILTON: -- the Government and his counsel?

10 THE COURT: That is correct.

11 MR. HAMILTON: Yes. I'm certainly aware of the  
12 importance of that. The United States submitted one plea  
13 agreement to defense counsel in this process.

14 THE COURT: Were any of the terms changed or did you  
15 negotiate the terms before you -- as you know, for example, in  
16 paragraph 13A, you all obviously -- unless that's just form  
17 language in this district, did you discuss the language in  
18 some portion?

19 MR. HAMILTON: 13A, our appellate waiver is a form  
20 provision --

21 THE COURT: Okay.

22 MR. HAMILTON: -- and it's only changed actually  
23 with internal approval within the office and there are  
24 actually -- there was -- the United States Attorney's Office  
25 put the plea agreement together. We advised Mr. Yarbrough

1       that it was coming his way and that really was the extent of  
2       it.

3               Of course we met with Mr. Yarbrough and went over it  
4       and I'm sure that there were some discussions about it. What  
5       precisely those were, I certainly would be reluctant to state  
6       with that level of detail, but --

7               THE COURT: No, that's fine. And, Mr. Yarbrough,  
8       every time the United States communicated with you, did you  
9       talk to Mr. Ralenkotter about the plea agreement itself?

10              MR. YARBROUGH: Yes, I did, Your Honor. Just to be  
11       fully disclosing everything here, the first time some of these  
12       terms were discussed, Mr. Ralenkotter was actually in the room  
13       and heard those discussions take place between myself and the  
14       attorneys for the Government.

15              And then there were later discussions before  
16       actually in the written agreement, which we engaged in, and  
17       then, finally, the written plea agreement, which I went over  
18       with Mr. Ralenkotter in detail.

19              THE COURT: Okay. And, Mr. Ralenkotter, were you  
20       privy to all plea negotiations?

21              MR. RALENKOTTER: Yes, Your Honor.

22              THE COURT: And you feel like you discussed with  
23       your attorney every time the United States and him had a  
24       discussion, you discussed it with him?

25              MR. RALENKOTTER: Yes, Your Honor.

1 THE COURT: And this is the only plea agreement you  
2 ever saw, correct?

3 MR. RALENKOTTER: Yes, Your Honor.

4 THE COURT: And that was a result of the  
5 negotiations between your counsel and the Government?

6 MR. RALENKOTTER: Yes, Your Honor.

7 THE COURT: All right. Are you concerned in any way  
8 that there's anything else out there about this plea agreement  
9 to which you were not advised?

10 MR. RALENKOTTER: No, sir.

11 THE COURT: And, Mr. Yarbrough, is that accurate  
12 that he was advised of all negotiations --

13 MR. YARBROUGH: Yes, it is, Your Honor.

14 THE COURT: Okay. Do you understand that parole has  
15 been abolished and if you are sentenced to prison, you will  
16 not be released on parole?

17 MR. RALENKOTTER: Yes, Your Honor.

18 THE COURT: Do you understand that even if the Court  
19 could place you on probation, it may or may not do so?

20 MR. RALENKOTTER: Yes, Your Honor.

21 THE COURT: I want to talk to you about your  
22 constitutional rights. Before I do so, I want to make sure  
23 you don't have any questions about anything we've covered so  
24 far.

25 MR. RALENKOTTER: No, sir.

1           THE COURT: Okay. The Court reminds and advises you  
2           that under the Constitution and laws of the United States, you  
3           have the right to plead and persist in your plea of not  
4           guilty, you have the right to be tried by a jury, have a  
5           speedy and public trial, you would have the right to the  
6           assistance of counsel, the right to confront and cross-examine  
7           the witnesses who testify against you, and the right to refuse  
8           to testify yourself, unless you voluntarily chose to do so in  
9           your own defense, and if you decide not to testify that cannot  
10          be held against you and the jury will be instructed they  
11          cannot hold it against you.

12                 In such trial you would be presumed innocent until  
13          such time, if ever, as the Government established your guilt  
14          by competent evidence beyond a reasonable doubt.

15                 At such trial you would be entitled to the issuance  
16          of subpoenas to compel the attendance of witnesses on your  
17          behalf. The Government would have to pay for the attendance  
18          of witnesses.

19                 Do you understand that if you plead guilty, you give  
20          up all of the rights I have just mentioned?

21                 MR. RALENKOTTER: Yes, Your Honor.

22                 THE COURT: Do you understand that if you plead  
23          guilty, there will not be a further trial of any kind in your  
24          case, so that by pleading guilty, you're giving up the right  
25          to a trial?

1 MR. RALENKOTTER: Yes.

2 THE COURT: If you plead guilty, do you understand  
3 you will also have to waive your right not to incriminate  
4 yourself since I will have to ask you questions about what you  
5 did in order to satisfy myself that you are guilty as charged  
6 and you will have to acknowledge your guilt?

7 MR. RALENKOTTER: Yes, Your Honor.

8 THE COURT: Are you willing to waive and give up  
9 your right to a trial and the other rights I have just  
10 discussed?

11 MR. RALENKOTTER: Yes, Your Honor.

12 THE COURT: Now, I understand through our  
13 discussions that you have a plea agreement with the United  
14 States. What I'm going to do now is I'm going to have Mr.  
15 Hamilton summarize -- and he's just going to briefly summarize  
16 the essential terms of the plea agreement.

17 Now, this is what the United States views as  
18 essential. I want you to listen closely. I want to make sure  
19 A, that he accurately summarizes what he views is essential  
20 and B, that you tell me if that's what you viewed as critical  
21 in agreeing to this plea agreement, are there any terms he  
22 left out either in summarizing or that weren't included in the  
23 plea agreement that were critical to you pleading guilty. Do  
24 you understand that?

25 MR. RALENKOTTER: Yes, sir.

1 THE COURT: Do you have any questions about what I  
2 just said?

3 MR. RALENKOTTER: No, sir.

4 THE COURT: Okay. Mr. Hamilton, will you please  
5 summarize briefly the essential terms of the plea agreement?

6 MR. HAMILTON: Yes, Your Honor. And before I do  
7 that, may I ask a question of the Court, please?

8 THE COURT: You absolutely may.

9 MR. HAMILTON: During the Court's proceeding today,  
10 I've been tracking Rule 11(b), which -- that the Court is  
11 aware of the areas the Court needs to cover before accepting a  
12 guilty plea, and I thought that since there were only two  
13 items that were left, that maybe I could bring those to the  
14 Court's attention.

15 THE COURT: You may.

16 MR. HAMILTON: -- and at this point before we get  
17 into the plea agreement. One is Rule 11 -- Rule 11(b) --  
18 excuse me, Rule 11, yes, (b)1(j), which is a reference to any  
19 applicable forfeiture and that was not addressed when the  
20 Court was discussing maximum penalties.

21 THE COURT: Correct. I cover that after the plea  
22 agreement once I see if you all agree to a forfeiture.

23 MR. HAMILTON: Okay. And I want to -- as the  
24 Court's already seen, there are no forfeiture allegations --

25 THE COURT: Right.



1 MR. HAMILTON: -- actually in the charge. And the  
2 other one, of course, may be another one that the Court is  
3 going to address and, again, I apologize for interrupting the  
4 Court, but that there was an obligation impose a special  
5 assessment. And that may also be later, but I wanted to bring  
6 it up.

7 THE COURT: I think we talked about that, correct?

8 MR. YARBROUGH: Yes, we did.

9 THE COURT: Mr. Ralenkotter?

10 MR. RALENKOTTER: Yes, sir.

11 MR. HAMILTON: Well, then I apologize.

12 THE COURT: That's all right. And let me just go  
13 over the forfeiture now since -- you mentioned there is no  
14 forfeiture, correct?

15 MR. HAMILTON: There's no forfeiture allegation. Of  
16 course, there's always a potential for a civil forfeiture  
17 proceeding, but that it not be part of the criminal  
18 proceeding. There are standard forfeiture provisions in the  
19 plea agreement, but as the Court saw, there are no forfeiture  
20 allegations in the informations.

21 THE COURT: Right. And, Mr. Ralenkotter, you  
22 understand all of that?

23 MR. RALENKOTTER: Yes, Your Honor.

24 THE COURT: Does your understanding then include  
25 that you've not agreed to any forfeiture in this case,

1 correct?

2 MR. RALENKOTTER: Yes, sir.

3 THE COURT: You do understand, and as Mr. Hamilton  
4 just pointed out, that there could be -- and I talk about this  
5 in a minute, but we can go over it now, that there could be a  
6 civil forfeiture in this case in which the United States later  
7 pursues a forfeiture, your house, your cars, anything like  
8 that; but it has to tie it to criminal proceeds. Do you  
9 understand that?

10 MR. RALENKOTTER: Yes, Your Honor.

11 THE COURT: Okay. Mr. Hamilton, is there anything  
12 else you'd like to --

13 MR. HAMILTON: No, Your Honor.

14 THE COURT: Okay. Thank you.

15 MR. HAMILTON: And in response to the Court's  
16 question about the summary of the plea agreement, the United  
17 States respectfully offers to the Court that the summary that  
18 the Government is going to provide today regarding the terms  
19 of the plea agreement is just that, a summary. And we'd like  
20 to state that for the record.

21 It should in no way be intended as a substitute for  
22 or an addition to the actual terms set forth in the plea  
23 agreement executed by all the parties and filed with the Court  
24 on May 24th, 2013, and I believe is identified as Record No. 4  
25 in the Court's docket system.

1           More specifically, the integration clause that's set  
2       forth in paragraph 15 of that written plea agreement remains  
3       in full force in effect, that nothing said during the  
4       Government's summary today modifies the written plea agreement  
5       in any way at all.

6           With that said, Your Honor, turning to paragraph one  
7       of the plea agreement, in that paragraph the parties agreed  
8       that the Defendant will waive indictment and plead to an  
9       information. That paragraph also sets forth the maximum  
10      penalties.

11          But if I may Your Honor, I would also like to  
12      restate my introductory remarks that the United States  
13      maintains that every paragraph, sentence, word is relevant to  
14      the proceedings. There isn't one that we consider more  
15      important than the other ones. Every term in here has a place  
16      and has been thought out by our office.

17          We use -- our office uses a plea agreement that is a  
18      form plea agreement in all the cases and it has actually been  
19      carefully thought out by senior management at our office. So  
20      I would just advise the Court of that generally, that we  
21      consider all of the terms relevant. That covers paragraph 1.

22          Turning to paragraph 2 of the plea agreement, in  
23      that paragraph, the paragraph sets forth the elements of the  
24      charged offense. Would the Court like for me to review the  
25      elements with the Defendant at this time?

1           THE COURT: Actually, we'll do it after you go  
2 through the plea agreement if that's okay, as well as the  
3 facts.

4           MR. HAMILTON: Yes, Your Honor. Well, turning to  
5 paragraph 3, of course that paragraph summarizes the factual  
6 basis with the Court, which the Government -- obviously the  
7 Court and the Government consider very relevant to this  
8 proceeding.

9           Also, I wanted to bring to the Court's attention  
10 that paragraph 3 not only summarizes the relevant facts, but  
11 paragraph 3 subparagraphs r, s, t -- r, s, and t in particular  
12 identify the agreement between the United States and the  
13 Defendant with respect to our promise to limit certain  
14 guideline -- to recommend to the Court that there be certain  
15 guideline limitations in place pursuant to Rule 11(c)(1)(B),  
16 which we have already addressed, but I wanted to bring to the  
17 Court's attention that that's where those are.

18           Turning to paragraph 4 of the plea agreement,  
19 turning to paragraph 4, that paragraph states that the  
20 Defendant acknowledges and understands the various rights that  
21 he is giving up by pleading guilty. And having compared that  
22 provision with what the Court has reviewed today, it looks  
23 like those items have not only been addressed in the plea  
24 agreement, but also have been addressed in open court today as  
25 well.

1                   Turning to paragraph 5, that paragraph outlines the  
2 possible disposition of this case, which is, of course, also  
3 important.

4                   And turning to paragraph 6, 7, and 8 of the plea  
5 agreement, those paragraphs outline the terms surrounding the  
6 Defendant's agreement to cooperate with any and all law  
7 enforcement agents and personnel of the United States  
8 Attorney's Office and outlines the parameters for that  
9 cooperation.

10                  Turning to paragraph 9, paragraph 9 addresses  
11 acceptance of responsibility and the United States sentencing  
12 guideline Section 3E1.1(b), which relates to the additional  
13 point.

14                  Turning to paragraph 10, that paragraph addresses  
15 payment of a special assessment. Paragraph 11 addresses the  
16 payment of restitution in this case, which the Court has  
17 touched upon already. Paragraph 12 addresses any financial  
18 obligation that the Defendant may have that arises from this  
19 case.

20                  Paragraph 13 addresses the appellate waiver, which  
21 the Court has addressed already today. Paragraph 14 deals  
22 with some contractual provisions related to the plea  
23 agreement, more particularly, the binding date of the  
24 agreement and the consequences of breach by any party to the  
25 plea agreement.

1 Paragraph 15 is an integration clause that requires  
2 that any modification to the agreement be reduced to writing  
3 and fully -- and, of course, quite unequivocally states that  
4 all the promises and undertakings and understandings between  
5 the Defendant and the United States are set forth in this plea  
6 agreement.

7 THE COURT: Great. Mr. Ralenkotter, did you hear  
8 Mr. Hamilton's summary of the plea agreement?

9 MR. RALENKOTTER: Yes, your Honor.

10 THE COURT: And he summarized briefly, as he  
11 mentioned, the essential terms of the plea agreement. Did you  
12 hear that?

13 MR. RALENKOTTER: Yes, Your Honor.

14 THE COURT: Were there any terms he left out that  
15 were critical to your decision to plead guilty?

16 MR. RALENKOTTER: No, Your Honor.

17 THE COURT: Okay. One of the terms that seems to me  
18 -- and I know Mr. Yarbrough would say is critical -- is if you  
19 look at -- and he summarized this, so your answer was correct,  
20 was -- if you look at 3(r) -- and I just want to talk to you  
21 about that provision for a second.

22 So there's two different ways the Government can  
23 hold you accountable for conduct. Under the sentencing  
24 guidelines if you are held liable for the entire conspiracy,  
25 the amount of loss would be significantly higher -- and I'm

1 just guessing. I mean unless you were involved in every piece  
2 of this, the guidelines would be higher and you would be  
3 subject to a higher guideline range. Do you understand that?

4 MR. RALENKOTTER: We spoke about that, yes, sir.

5 THE COURT: Okay. So this, to me, is a critical  
6 component for you to plead guilty. But there's one thing I  
7 want to talk to you about and that is that while that is true  
8 under the sentencing guidelines, you realize that under  
9 3553(a), I will consider the entire offense and what you are  
10 personally responsible for. And it will be still limited in  
11 some fashion and things you don't know about, I can tell you  
12 because I'm the sentencing judge, I'm not going to consider,  
13 but I will consider the entire offense before determining if  
14 the guidelines are appropriate. Do you understand?

15 MR. RALENKOTTER: Yes, Your Honor.

16 THE COURT: So while this paragraph is critical to  
17 you and I understand why, you understand the Court can  
18 consider more than that. The Court's not bound by this  
19 limitation.

20 MR. RALENKOTTER: Yes, Your Honor.

21 THE COURT: Okay. Now, is there anything that Mr.  
22 Hamilton left out that was critical to your decision to plead  
23 guilty?

24 MR. RALENKOTTER: No, Your Honor.

25 THE COURT: Okay. Mr. Yarbrough, did he give a fair

1 and accurate summary of the plea agreement?

2 MR. YARBROUGH: Yes, I believe so, Your Honor.

3 THE COURT: Was there anything in your mind he left  
4 out that was critical to the Defendant's decision to plead  
5 guilty?

6 MR. YARBROUGH: Nothing that I can think of, Your  
7 Honor.

8 THE COURT: Has anyone made any other or different  
9 promises in this case that induced you to plead guilty?

10 MR. RALENKOTTER: No, Your Honor.

11 THE COURT: Aside from this plea agreement, has any  
12 person, including an officer or agent of the Government or any  
13 of the lawyers in this case promised or even suggested that  
14 you will receive a lighter sentence or any other form of  
15 leniency if you plead guilty?

16 MR. RALENKOTTER: No, Your Honor.

17 THE COURT: So you understand that by pleading  
18 guilty, you can cut all the deals you want, but I can still  
19 sentence you to the maximum sentence in this case?

20 MR. RALENKOTTER: Yes, Your Honor.

21 THE COURT: Is your decision to plead guilty your  
22 own free and voluntary act?

23 MR. RALENKOTTER: Yes, Your Honor.

24 THE COURT: Have you been subjected to any threats  
25 or force of any kind which caused you to plead guilty?



1 MR. RALENKOTTER: No, Your Honor.

2 THE COURT: Okay. Now, we discussed this before --  
3 there's no forfeiture provisions in this plea agreement. Do  
4 you understand?

5 MR. RALENKOTTER: Yes, sir.

6 THE COURT: And you also understand you can still be  
7 subject to civil forfeiture?

8 MR. RALENKOTTER: Yes, sir.

9 THE COURT: You also understand that restitution is  
10 mandatory?

11 MR. RALENKOTTER: Yes, sir.

12 THE COURT: Okay. Great. Mr. Hamilton, I would  
13 like you to summarize what the Government would have to prove  
14 beyond a reasonable doubt, in other words the essential  
15 elements of this case, if this case went to trial. And I want  
16 you to listen closely because I'm going to ask you if you  
17 understand what the Government would have to prove beyond a  
18 reasonable doubt.

19 Then I'm going to have Mr. Hamilton summarize the  
20 facts underlying it, and the facts are pretty extensive in  
21 this plea agreement as you know. I'm just going to have him  
22 give a brief summary of the facts underlying the essential  
23 elements, even though you signed and agreed to every fact in  
24 this plea agreement.

25 And then I'm going to ask you a couple questions

1 about that and then I'm going to ask you a question about the  
2 entire facts listed in the plea agreement. Do you understand  
3 that?

4 MR. RALENKOTTER: Yes, sir.

5 THE COURT: Okay. Go ahead, Mr. Hamilton.

6 MR. HAMILTON: All right. Your Honor, in order to  
7 -- in order for this Defendant to be convicted, the United  
8 States at trial would have to prove beyond a reasonable doubt  
9 that there existed an agreement between two or more persons to  
10 commit mail fraud, an offense against the United States, that  
11 is, with the intent to defraud, to knowingly devise and intend  
12 to devise and to participate in a scheme and artifice to  
13 defraud, and to obtain money by means of materially false and  
14 fraudulent pretenses, representations, and omissions, and for  
15 the purpose of executing such scheme and artifice, knowingly  
16 causes any matter or thing to be sent and delivered by mail or  
17 commercial interstate carrier, in violation of 18 U.S.C. §  
18 1341; and wire fraud, an offense against the United States,  
19 that is, with the intent to defraud, to knowingly devise and  
20 intend to devise and to participate in the scheme and artifice  
21 to defraud, and to obtain money by means of materially false  
22 and fraudulent pretenses, representations, and omissions, and  
23 for the purpose of executing such scheme and artifice to cause  
24 to be transmitted by means of wire in interstate commerce,  
25 writings, signs, and signals, in violation of 18 U.S.C. §

1 1343.

2 That the Defendant knowingly and voluntarily joined  
3 and participated in the conspiracy; and that an overt act was  
4 committed by at least one co-conspirator in furtherance of the  
5 conspiracy.

6 THE COURT: Thank you. Now, all that is listed in  
7 paragraph 2(a) of your plea agreement. You remember that?

8 MR. RALENKOTTER: Yes, sir.

9 THE COURT: Do you understand the Government would  
10 have to prove that entire mouthful beyond a reasonable doubt  
11 at trial?

12 MR. RALENKOTTER: Yes, sir.

13 THE COURT: Okay. Now, I'm going to summarize it in  
14 a different way, but I'm going to tell you that what Mr.  
15 Hamilton said is 100 percent accurate.

16 What I'm going to say is just for the simple minds  
17 like mine, the way that I think of it, which is you had to  
18 participate in a conspiracy to commit fraud and during that  
19 conspiracy, you had to use the mail and/or wire, which is a  
20 fax, e-mail.

21 The wire would have to cross interstate lines. The  
22 mail, if it's the United States Postal Service and other  
23 things -- it has to be a commercial interstate carrier, so it  
24 can be UPS or FedEx or someone like that, or it can be the  
25 United States mail. You would have to send things, you would

1 have to wire things all in furtherance of that conspiracy. Do  
2 you understand?

3 MR. RALENKOTTER: Yes, Your Honor.

4 THE COURT: Okay. Is there any -- do you have any  
5 questions about any of that?

6 MR. RALENKOTTER: No, sir.

7 THE COURT: Okay. Now, I'm going to have Mr.  
8 Hamilton -- again, he's just going to briefly summarize the  
9 facts underlying those essential elements, so what the  
10 Government would prove at trial. But it's just a brief  
11 summary.

12 I recognize this plea agreement contains extensive  
13 facts that you've already agreed to and I'm going to ask you  
14 about that as well. Go ahead.

15 MR. HAMILTON: And, Your Honor, I -- certainly I  
16 understand. I hear the Court when the Court is telegraphing  
17 to me that the Court would like for this to be brief, but with  
18 a case like this, we're reluctant to -- I'm reluctant to  
19 provide that kind of brief summary, but I feel like with the  
20 disclaimer that I provided at the beginning that any sort of  
21 summary that I provide is not in any way intended to modify  
22 the plea agreement, that we are safe to do that.

23 Generally, the factual basis in -- and I think that  
24 it might be easiest just to highlight some of these  
25 subparagraphs if --

1 THE COURT: Yeah. I mean if you want to go through  
2 and read it, you're perfectly welcome if you feel more  
3 comfortable that way. I can assure you -- and I'm sure Mr.  
4 Yarbrough doesn't object, nor does Mr. Ralenkotter, that -- I  
5 mean I know Mr. Yarbrough went over this factual basis  
6 extensively and I'm going to ask that with Mr. Ralenkotter,  
7 but if you want to read the entire thing, I won't be offended,  
8 so --

9 MR. HAMILTON: No, Your Honor. Typically -- and, of  
10 course, this is my first proceeding before this Court.  
11 Typically in these, in white collar matters, which I typically  
12 handle, with a sophisticated Defendant like Mr. Ralenkotter,  
13 if I may, what I ask the Court to do -- and you may already be  
14 planning to do this -- is I ask the Court to inquire of the  
15 Defendant if he has, in fact, read and reviewed paragraph 3,  
16 which is on pages 4 through --

17 THE COURT: I think it's 7 or 8.

18 MR. HAMILTON: I believe it goes all the way through  
19 paragraph -- it goes from paragraph 3, pages 4 through 11, did  
20 he read every bit of that and by placing his signature --

21 THE COURT: Pages 4 through 11? Do I have a  
22 different plea agreement? I have it on 2 through 9.

23 MR. HAMILTON: That's correct, Your Honor. Excuse  
24 me, that is correct.

25 THE COURT: Oh, okay. Maybe I heard you wrong. Go

1 ahead.

2 MR. HAMILTON: You did hear me incorrectly -- I'm  
3 sorry. You did hear me correctly. I just misspoke.

4 THE COURT: Okay.

5 MR. HAMILTON: So that he read all of paragraph 3  
6 and that he agrees with it all and by placing his signature at  
7 the end of the document, he not only manifests assent to the  
8 entire plea agreement, but, of course, the factual basis in  
9 particular. Would the Court consider doing that?

10 THE COURT: Absolutely. Mr. Hamilton, let me just  
11 do that at the outset, but I still want you to summarize the  
12 facts.

13 MR. HAMILTON: I will, Your Honor.

14 THE COURT: Okay. Mr. Ralenkotter, you reviewed  
15 this plea agreement, correct?

16 MR. RALENKOTTER: Yes, Your Honor.

17 THE COURT: You went through every paragraph in  
18 paragraph -- in 3 in particular, paragraph 3(a) through (u)?

19 MR. RALENKOTTER: Yes, Your Honor.

20 THE COURT: And you discussed them extensively with  
21 Mr. Yarbrough before agreeing to sign this document?

22 MR. RALENKOTTER: Yes, Your Honor.

23 THE COURT: And you agree to every fact therein or  
24 you wouldn't have signed this document, correct?

25 MR. RALENKOTTER: Yes, Your Honor.

1 THE COURT: Okay. You may proceed with a summary.

2 MR. HAMILTON: All right. Thank you, Your Honor.

3 Paragraph 3(a) provides the summary information  
4 about the company, Pilot Corporation, and about its direct  
5 sales division, which consists of regional vice presidents,  
6 sales directors, and sales managers, and account  
7 representatives, and that they are responsible for negotiating  
8 various incentives, including price discounts for the  
9 customers.

10 In paragraph (b), paragraph 3(b) in summary  
11 identifies who the Defendant is and his place in the company  
12 and that since 2008, he served as a regional sales director in  
13 Pilot's direct sales division. There are other relevant  
14 provisions in that, but in the summary, I will skip over  
15 those.

16 Paragraph 3(c) states that -- provides an  
17 explanation about the way in which, in many instances, Pilot's  
18 diesel discount deals are determined and it provides the  
19 various ways that that happens.

20 Paragraph 3(d) also relates to the way in which  
21 Pilot's discount deals are negotiated with customers and the  
22 way in which those are implemented. And paragraph (e)  
23 identifies the difficulties for Pilot customers in following  
24 what their diesel discount deals are because of the way it's  
25 priced and the way that those prices are determined.

1 Paragraph 3(f) states that from approximately 2008  
2 through approximately April 2013, the Defendant agreed and  
3 conspired with other Pilot employees to deceptively withhold  
4 discounts from Pilot customers, first through the deceptive  
5 reduction of monthly rebate amounts, and ultimately by  
6 deceptively lowering the off-invoice of customers who are  
7 unlikely to catch off-invoice discount reduction and who  
8 purchased fuel at Pilot travel plazas where Pilot had limited  
9 competition.

10 Paragraph 3(g) states that from approximately 2008  
11 through approximately April 2013 that the Defendant  
12 deceptively withheld rebate amounts from Pilot customers in  
13 the following manner: That each month, the Defendant's inside  
14 regional account representative who worked at Pilot  
15 headquarters in Knoxville and was therefore referred to as an  
16 inside regional account rep, sent a spreadsheet by way of  
17 interstate wire transmission, namely an e-mail to the  
18 Defendant who worked remotely in Hebron, Kentucky, that  
19 identified the actual rebate amounts that the Defendant  
20 Ralenkotter's customers should receive pursuant to their  
21 discount agreements and recommended amounts by which to  
22 deceptively reduce the targeted customers' rebates without  
23 telling the affected customers.

24 The Defendant would then approve or sometimes  
25 further reduce his inside regional account representative's



1 recommended rebate reductions.

2 After the Defendant approved the amounts of the  
3 fraudulent rebate reductions, the defendant's inside regional  
4 sales representative would cause rebate checks in the  
5 deceptively reduced amounts to be mailed or sent by a  
6 commercial carrier to the targeted customers.

7 On one occasion between 2008 and 2013, the Defendant  
8 told a subordinate that if he was not willing to deceptively  
9 reduce the customer's rebate, then the Defendant would take  
10 the customer's account from him.

11 On October 25th, 2012, during a business meeting of  
12 Pilot sales directors, Defendant Ralenkotter expressed in the  
13 presence of other sales directors his mutual agreement to  
14 defraud certain Pilot customers by deceptively withholding the  
15 full amount of the agreed-upon rebate amount to some customers  
16 when the actual rebate that Pilot owed the customer for a  
17 current month substantially exceeded the rebate Pilot paid the  
18 customer for the immediately preceding month.

19 On October 25th, 2012, Defendant Ralenkotter also  
20 expressed his intent to defraud Pilot customers by bragging to  
21 other Pilot direct sales employees that for the purpose of  
22 preventing a Pilot customer from taking its business to  
23 another customer, he lied to that customer and told that  
24 customer that Pilot would give that customer a better discount  
25 deal than the customer had previously been receiving, well

1 knowing that he, the Defendant, had no intention of actually  
2 giving that discount to the customer and, in fact, did not  
3 give that promised discount to the customer.

4 During the same October 25, 2012 business meeting of  
5 Pilot sales directors, it was agreed among those present that  
6 Pilot's national accounts sales director would teach Pilot's  
7 sales managers and account representatives manual rebate  
8 practices during Pilot's annual sales training event at Pilot  
9 headquarters planned for November 2012.

10 Then on November 19 and 20, 2012, Pilot held a  
11 mandatory sales training meeting for the company's diesel  
12 direct sales division of its headquarters located at 5508  
13 Lonas Drive, Knoxville, Tennessee.

14 During this training meeting, Defendant Ralenkotter  
15 attended a break-out teaching session in which Pilot's  
16 national accounts sales director, in furtherance of the  
17 conspiracy to commit mail and wire fraud, encouraged and  
18 taught Pilot direct sales personnel how to defraud without  
19 detection, some of Pilot's customers who choose to receive  
20 their discount in the form of a rebate check. This Pilot  
21 sales director who gave this instruction encouraged the use of  
22 a spreadsheet in the manner similar to the process described  
23 above in paragraph 3(g).

24 By February 2013, the conspiracy to commit mail and  
25 wire fraud in which the Defendant Ralenkotter and other Pilot

1 employees were participating had evolved to the point that  
2 Defendant Ralenkotter was working with other Pilot employees  
3 toward identifying customers one, who purchased diesel from  
4 Pilot in locations where Pilot had no direct competition, and  
5 two, who also would not likely be able to notice a change in  
6 their off-invoice discount, so that he and his co-conspirators  
7 could deceptively reduce the off-invoice discount amounts for  
8 those customers without the customers' knowledge, which  
9 Defendant Ralenkotter referred to as "jacking" the discount  
10 during a February 22, 2013 conversation that the Defendant  
11 Ralenkotter had with another Pilot direct sales employee.

12 From 2008 through April of 2013, the Defendant, in  
13 violation of 18 U.S.C. § 1349, conspired and agreed with other  
14 Pilot employees to commit mail fraud, an offense against the  
15 United States in violation of 18 U.S.C. § 1341, and wire  
16 fraud, an offense against the United States in violation of 18  
17 U.S.C. § 1343. And the elements, again, which we have gone  
18 over today are restated here in substance as well.

19 It further states that the Defendant caused to be  
20 transmitted by means of wire and interstate commerce,  
21 writings, signs, and signals, so that Pilot could fraudulently  
22 retain rebates and discounts that were owed and due to Pilot  
23 customers, so that Pilot could create and maintain the  
24 materially false pretense that those customers were, in fact,  
25 receiving their agreed upon diesel price discount with Pilot

1 for the purpose of inducing those customers to continue with  
2 their purchasing of diesel fuel from Pilot, rather than a  
3 competitor and for the purpose of increasing both Pilot's  
4 profits and its sales personnel's commissions.

5 Defendant Ralenkotter and co-conspirator Pilot  
6 employees caused fraudulently determined rebate check amounts  
7 and invoices to be sent to many of Pilot's customers, so that  
8 Pilot could fraudulently retain those rebates that were owed  
9 and discounts that were due to customers, so that Pilot could  
10 create and maintain the false pretense that those customers  
11 where, in fact, receiving their agreed upon price discount  
12 with Pilot, for the purpose of inducing those customers to  
13 continue their purchasing of diesel from Pilot, rather than a  
14 competitor.

15 Paragraph -- that brings us to paragraph 3(p), which  
16 states an additional reason for the scheme, which has already  
17 been summarized.

18 Paragraph 3(q), during March 2012, as an overt act  
19 in furtherance of the conspiracy to commit mail fraud and wire  
20 fraud by defrauding Pilot customers, Defendant Ralenkotter  
21 knowingly and willfully, and with the intent to defraud,  
22 caused an interstate wire transmission to be sent, namely the  
23 e-mailing of a spreadsheet from Pilot's Knoxville, Tennessee  
24 headquarters to Defendant Ralenkotter, who worked remotely in  
25 Hebron, Kentucky, that recommended the deceptive reduction of

1 customer rebates, and further caused a deceptively reduced  
2 rebate check for the month of February 2012 to be mailed from  
3 Pilot's Knoxville, Tennessee headquarters to Pilot's customer  
4 Dana Transport in New Jersey.

5 The remainder of -- well, paragraph 3(r), 3(s), and  
6 3(t); both the Government and the Court has addressed that the  
7 Defendant, relating to the 11(c)(1)(B) aspect of this plea  
8 agreement.

9 And, finally, the Government would note that in  
10 reaching this agreement, the United States has acknowledged in  
11 this plea agreement that Defendant Ralenkotter is the first  
12 Pilot sales director to admit and accept criminal  
13 responsibility for conspiring with others, including Pilot's  
14 direct sales division employees to defraud Pilot customers by  
15 fraudulently reducing Pilot customer rebates and discounts.

16 The Government appreciates the Court's patience with  
17 the Government in reviewing that. I tried to summarize the  
18 initial introduction, but due to the nature of this case, I  
19 felt like more of a verbatim reading of some more substantive  
20 aspects was necessary.

21 THE COURT: That's perfectly fine. So, Mr.  
22 Ralenkotter, between 2008 and 2013, you did conspire with  
23 others, including employees of Pilot, to defraud some of the  
24 customers as to the amount of their rebates. Is that  
25 accurate?

1 MR. RALENKOTTER: Yes, Your Honor.

2 THE COURT: And in doing so, you -- and Mr. Hamilton  
3 went over some specific instances, I'm just going to cover it  
4 generally -- you used the mails and wires to accomplish that  
5 scheme to defraud. Is that fair?

6 MR. RALENKOTTER: Yes, Your Honor.

7 THE COURT: And this occurred in the Eastern  
8 District of Tennessee, which is in Knoxville and other places,  
9 as well as apparently in the Eastern District of Kentucky,  
10 which includes Hebron, Kentucky. Is that accurate?

11 MR. RALENKOTTER: Yes, sir.

12 THE COURT: And you did all that voluntarily,  
13 knowingly, and intelligently, correct?

14 MR. RALENKOTTER: Yes, Your Honor.

15 THE COURT: Is there anything I said in summarizing  
16 Mr. Hamilton that's inaccurate?

17 MR. RALENKOTTER: No, sir.

18 THE COURT: Is there anything Mr. Hamilton said in  
19 summarizing the terms -- the facts listed in the plea  
20 agreement that's inaccurate?

21 MR. RALENKOTTER: No, Your Honor.

22 THE COURT: Are there any facts included in the plea  
23 agreement itself to which you signed that are inaccurate?

24 MR. RALENKOTTER: No, Your Honor.

25 THE COURT: In light of everything I've told you

1 about your rights and in light of all of my questions, how do  
2 you plead to Count 1 of the information? Guilty or not  
3 guilty?

4 MR. RALENKOTTER: Guilty, Your Honor.

5 THE COURT: The Court has observed the appearance  
6 and responsiveness of the Defendant in giving his answers to  
7 the questions asked. Based on such observation of the answers  
8 given, the Court is satisfied that Mr. Ralenkotter is in full  
9 possession of his faculties. He's not suffering from any  
10 apparent physical or mental illness. He's not under the  
11 influence of narcotics or alcohol of any kind.

12 While he took a NyQuil last night, the Court has  
13 observed him and he's completely responsive and understands  
14 the proceedings in which he is engaged. He understands the  
15 nature and meaning of the charges and the consequences of his  
16 plea of guilty. He's aware of all plea negotiations  
17 undertaken in his behalf.

18 The Court finds the Defendant is fully competent and  
19 capable of entering an informed plea and that his plea of  
20 guilty is a knowing and voluntary plea supported by an  
21 independent basis in facts containing each of the essential  
22 elements of the offense. His plea of guilty is therefore  
23 accepted.

24 Do I sign the original plea agreement in this  
25 district?

1 MR. HAMILTON: That's typically not our practice,  
2 but it does -- it actually brings me to a point that if I may  
3 ask the Court a question --

4 THE COURT: Yes.

5 MR. HAMILTON: -- that the original plea agreement  
6 is right there with the clerk of Court and I was -- I would  
7 request, when it's convenient for the Court, that that plea  
8 agreement be passed to the Defendant so that he could  
9 acknowledge on the record that that's his original signature.

10 THE COURT: Absolutely.

11 MR. HAMILTON: May I approach, Your Honor, and  
12 obtain that --

13 THE COURT: Yeah. I don't have it, so that would be  
14 great.

15 MR. HAMILTON: May I approach the lectern, Your  
16 Honor?

17 THE COURT: You may. Is the plea agreement under  
18 seal?

19 MR. HAMILTON: Your Honor, that was the next thing I  
20 was going to do was to move to unseal the plea agreement at  
21 this time.

22 THE COURT: That is granted. Would you acknowledge  
23 that that's your signature and then, Mr. Ralenkotter, would  
24 you also initial by paragraph 3, along with your attorney,  
25 acknowledging that those are the facts that we're talking



1 about throughout this proceeding?

2 (The Defendant complied.)

3 MR. HAMILTON: And, Your Honor, if I could just  
4 state for the record that this plea agreement was filed under  
5 seal on May 24th, 2013, and it is record No. 4 and --

6 COURTROOM DEPUTY: That's the proposed. It's  
7 actually Document No. 8.

8 MR. HAMILTON: I'm sorry, Document No. 8.

9 COURTROOM DEPUTY: I apologize.

10 MR. HAMILTON: It's now Document No. 8.

11 THE COURT: Okay.

12 MR. HAMILTON: Well, then I need to, if I may then,  
13 when I began my summary, I referenced this -- and on this  
14 document, it actually has 4. That was the proposed number at  
15 the bottom of it.

16 So apparently it's now Document No. 8, so earlier in  
17 this proceeding before I began the summary, I referenced it as  
18 Document No. 4. I need to correct that it's Document No. 8.

19 THE COURT: Okay.

20 MR. HAMILTON: And I just want to bring to the  
21 Court's attention that what the Defendant just reviewed and  
22 what he initialled is a document of the Court at this point  
23 and it was brought to court by the Court by the clerk's office  
24 to have in this proceeding, and so we're now going to return  
25 it back to the Court.

1 THE COURT: Great. Now, will you initial paragraph  
2 No. 3 as well?

3 MR. HAMILTON: The United -- on behalf of the United  
4 States?

5 THE COURT: Yes, acknowledging that those are the  
6 facts that we're all talking about.

7 (The United States complied.)

8 THE COURT: Great. That will be filed in the record  
9 and it will be -- it will not be under seal at this point.  
10 And you don't need me to sign it, correct?

11 MR. HAMILTON: No, sir.

12 THE COURT: Okay. But it is approved and accepted  
13 by the Court.

14 Can I ask how the bond has already been set? And I  
15 just want to mention to you, Mr. Ralenkotter, you will be on  
16 your own recognizance. Obviously, as you know, you can't  
17 commit another federal, state, or local crime or any of the  
18 other conditions that you'll sign and acknowledge to.

19 If you were to violate those conditions, you will  
20 await sentencing in jail. Are we on the same page?

21 MR. RALENKOTTER: Yes, Your Honor.

22 THE COURT: Okay. As to the presentence report,  
23 would the United States or Mr. Yarbrough like it prepared now  
24 and a sentencing date set or would you prefer that I set a  
25 status conference a few months out and then we can discuss an

1 appropriate sentencing date?

2 MR. HAMILTON: May we have a moment, Your Honor?

3 THE COURT: Yes. You absolutely may.

4 MR. HAMILTON: Your Honor, the Government and, I  
5 believe, defense counsel would propose scheduling a status  
6 conference in 120 days.

7 MR. YARBROUGH: That's correct, Your Honor.

8 THE COURT: Okay. So your math will be better than  
9 mine. When are we -- so you're talking about September?

10 MR. HAMILTON: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. YARBROUGH: Right at the end of September, Your  
13 Honor.

14 THE COURT: All right. How about September 24th?

15 MR. YARBROUGH: That's clear for us, Your Honor.

16 MR. HAMILTON: That's fine for the Government, Your  
17 Honor.

18 THE COURT: Okay. We'll set it at 1:30 on September  
19 24th.

20 MR. YARBROUGH: Would that be here in Knoxville,  
21 Your Honor, or will that be determined?

22 THE COURT: That will be in Knoxville unless you  
23 want it somewhere else.

24 MR. HAMILTON: I think we prefer Knoxville.

25 THE COURT: Okay.

1 MR. YARBROUGH: I think that would be appropriate.

2 THE COURT: Okay. It will be 1:30 on September 24th  
3 in Knoxville.

4 At some point, Mr. Ralenkotter, we'll go over how  
5 the presentence report works. The gist of it is that  
6 probation will interview you at some point once we set a  
7 schedule. You'll meet with them, you can have your counsel  
8 present, and then that kind of kicks off where they do their  
9 investigation.

10 They provide a presentence report to me, and then  
11 your counsel and the United States can object and probation  
12 will first determine that and if the objections can't be  
13 resolved, I'll determine that.

14 Do you have any questions about that process?

15 MR. RALENKOTTER: No, sir.

16 THE COURT: At some point we'll set the date for  
17 that, but right now, we'll wait until September 24th to  
18 discuss that, okay?

19 Anything else we need to cover at this time?

20 MR. YARBROUGH: No, Your Honor. Thank you.

21 THE COURT: Thank you.

22 MR. HAMILTON: No, Your Honor.

23 THE COURT: Okay. Thank you all. I'll see you on  
24 September 24th.

25 (End of Proceedings.)

## REPORTER'S CERTIFICATION

STATE OF TENNESSEE )  
 )  
COUNTY OF HAMILTON )

I, TIFFANY ASHTON, LCR #625, Licensed Court Reporter and notary public, in and for the State of Tennessee, do hereby certify that the above hearing was reported by me, transcribed by me, and that the foregoing 60 pages of the transcript is a true and accurate record to the best of my knowledge, skills, and ability.

I further certify that I am neither of kin nor of counsel to any of the parties nor in any way financially interested in the outcome of this case.

I further certify that I am duly licensed by the Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this 8th day of July, 2013.

*Tiffany Ashton*

Tiffany Ashton, LCR #625  
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